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JOHN T. FEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 639

PETER B. SCHYMAN,

Petitioner,

vs.

THE DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS, AN ADMINISTRATIVE AGENCY, AND C. HOBART ENGLE, CHAS. F. KERVIN, H. KENNETH SCATLIFF, OSCAR HAWKINSON, JAMES H. HUTTON, EVERETT P. COLEMAN, WALTER STEVENSON, JACOB L. SHEER AND MARJORIE TAYLOR,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, AND TO THE SUPREME COURT OF ILLINOIS.

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INDEX.

	PAGE
Opinions below	2
Jurisdiction	3
Questions presented	3
Statutes involved	5
Statement	8
Reasons for granting the writ	13
Argument	14
Conclusion	31

CITATIONS.

Cases.

Andrews v. United States, 162 U. S. 420 17

Ashbacker Radio Corp. v. Federal Communications Commission, 326 U. S. 327 22

Barsky v. Board of Regents, 347 U. S. 442 ..... 14, 15, 16, 23, 26, 28-9

Bratt v. Western Air Lines, 155 F. 2d 850, 853 22

Deery v. Cray, 72 U. S. 795, 807-8 24

Hughes v. State Board of Medical Examiners, 158 Ga. 602, 123 S. E. 879 19-20

Kalman v. Walsh, 355 Ill. 341 22

Luterman v. United States, 3 Cir., 281 F. 374 ..... 17, 18

Peck v. Heurich, 167 U. S. 624, 629 24

People v. Bernovich, 403 Ill. 480 25

People v. Byrnes, 4 Ill. 2d 109 25

People v. Greene, 1 Ill. 2d 235 24-25
People v. Hubbard, 313 Ill. 346, 349 26
People v. Peter B. Schyman, 374 Ill. 292 12
People v. Thompson, 392 Ill. 589 24
Schireson v. Walsh, 354 Ill. 40, 45 ..... 20, 22, 27, 28
Shelley v. Kraemer, 334 U. S. 1, 14-18 30
Smith v. Department of Registration and Education, 412 Ill. 332 ..... 29, 30
Sorrells v. United States, 287 U. S. 435 ..... 17, 18, 19
State Board of Medical Examiners v. Lewis, 149 Ga. 716, 102 S. E. 24 20
Twinning v. New Jersey, 211 U. S. 78, 90-91 30
U. S. v. Eman Mfg. Co., D. C. Colo., 271 F. 153 18
United States v. Doctor Charles F. Kaadt, No. 1314 Criminal, D. C. N. D. Ind., Ft. Wayne Div 10
United States v. Doctor Peter S. Kaadt, No. 1314 Criminal, D. C. N. D. Ind., Ft. Wayne Div 10
Wong Yang Sung v. McGrath, 339 U. S. 33 20
Yick Wo v. Hopkins, 118 U. S. 356, 373 29

Statutes.

The Illinois Medical Practice Act (Illinois Revised Statutes, Ch. 91)
§ 16a. 8. ..... 5, 8
§ 16b. 5, 8, 21, 22, 27
§ 16b—2 6
The Illinois Administrative Review Act (Illinois Revised Statutes, Ch. 110, § 264 et seq.)
§ 268 6
§ 274 6
§ 275 6
§ 276 7

The Illinois Civil Practice Act (Illinois Revised Statutes, Ch. 110)
§ 75 7
§ 86 7

Miscellaneous.

70 Corpus Juris Secundum § 18, p. 893..... 22
Gelhorn, "Administrative Law", p. 273, n13..... 23

APPENDICES.

Appendix "A" 33
Appendix "B" 55
Appendix "C" 58
Appendix "D" 63

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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, AND TO THE SUPREME COURT OF ILLINOIS.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Peter B. Schyman, petitioner, prays that a writ of certiorari issue to review the final judgment of the Appellate Court of Illinois, First District, affirming a judgment of the Superior Court of Cook County, Illinois, affirming an order of the Department of Registration and Education of the State of Illinois revoking petitioner's license to practice medicine in all its branches. Said judgment

became final when the Supreme Court of Illinois, on September 21, 1956, denied petitioner's Petition for Leave to Appeal from the decision of said Appellate Court of Illinois.

To the extent that the order of the Supreme Court of Illinois denying leave to appeal may constitute a final judgment rendered by the highest court of the State in which a decision could be had, petitioner prays that a writ of certiorari issue to review such final judgment of that Court.

OPINIONS BELOW.

The opinion of the Appellate Court of Illinois, First District, is reported in 9 Ill. App. 2d 504, 133 N. E. 2d 551. A copy is appended hereto as Appendix "A".

Petitioner originally appealed directly to the Supreme Court of Illinois from the adverse decision of the Superior Court of Cook County, Illinois, but said Supreme Court transferred the cause to said Appellate Court, pursuant to Illinois Revised Statutes, Ch. 110, § 86 which provides for transfer to the proper reviewing court of cases wrongly appealed. "* * * the case then proceed(s) as if it had been taken there in the first instance." A copy of the transfer order is hereto appended as Appendix "B".

The Final Judgment Order of the Superior Court of Cook County, Illinois (R. 334), is unpublished. A copy thereof is hereto appended as Appendix "C".

Petitioner's license was revoked (R. 314) when the Director of the Department of Registration and Education of the State of Illinois adopted the findings and recommendation of a Special Medical Examining Committee. That Committee's report of findings and recommendations (R. 256) appears hereinafter as Appendix "D".

JURISDICTION.

The judgment of the Appellate Court of Illinois, First District, was entered on April 3, 1956, and a timely petition for rehearing was denied on April 24, 1956. Thereafter, a timely petition to the Supreme Court of Illinois for Leave to Appeal was denied on September 21, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3).

In his "Statement", petitioner specifies the stage in the proceedings before the state Department when he moved to strike the insufficient complaint and citation and to suppress the evidence obtained by entrapment and the irrelevant but prejudicial evidence, together with the denial of said motion; also, the denial by the Superior Court of his motion to vacate its final judgment. These raised and disposed of the federal questions. No formal exception was necessary. Ill. Rev. Stat. Ch. 110, § 80. The Appellate Court stated (R. 352) that in its opinion the Supreme Court had decided that the constitutional issues were not material.

QUESTIONS PRESENTED.

The Supreme Court of Illinois transferred to the Appellate Court, First District, the first appeal to it of the decision of the Superior Court of Cook County because it found and adjudged (R. 357), without opinion, only that:

> "* * * this case was wrongfully appealed to this Court."

The Appellate Court, in opinion, stated:

> "Plaintiff's contentions pertaining to due process of law as guaranteed to him by Sec. 2, Art. II of the Constitution of the State of Illinois and Amendment XIV of the Constitution of the United States, *cannot be passed upon by us.* We must assume that the Supreme Court in transferring the case to this court decided that these issues were not material to the ultimate decision of the appeal." [Emphasis supplied.]

Thereafter, the Supreme Court of Illinois, without opinion, denied petitioner's Petition for Leave to Appeal from the decision of the Appellate Court.

It would accordingly appear that the following questions are presented:

1. Whether construction of a State statute by the reviewing courts of that state in such manner as effectively to preclude inquiry into whether or not a party was accorded procedural due process is constitutional.

2. Whether an intermediate appellate (or inferior state) court is *obliged* to pass upon asserted claims of deprivation of due process made by a litigant, or to find independently that such constitutional claims will not be controlling.

3. Whether an intermediate appellate court of a state, upon transfer to it of an appeal by the highest appellate court of that state having jurisdiction of appeals in which the validity of a statute or the construction of the constitution is involved, is excused by virtue of said transfer from examining and passing upon the party's assertion of a constitutional issue.

4. Whether the highest appellate court of a state empowered to decide constitutional questions on appeal [Illinois Revised Statutes, Ch. 110, § 75(1)] may decline to do so or to find specifically that such asserted constitutional questions are not controlling and thereby preclude review of such determination by this Court.

5. Whether the highest appellate tribunal of a state with jurisdiction to consider appeals wherein asserted constitutional violations are controlling may, after it transfers an appeal to an intermediate appellate court for lack of what it conceives to be such a controlling constitutional issue, after which the intermediate court confines its re-

view to other issues, summarily deny the aggrieved party review of such asserted constitutional issues, and thereby forever foreclose consideration of such issues by this Court.

6. Whether the appellate courts of a state may constitutionally affirm a construction of a state statute providing for the revocation of a license to practice medicine after due notice and a fair hearing, so as to dispense with all procedural due process.

7. Whether a state appellate court having jurisdiction over appeals involving constitutional questions may review such questions properly presented by one appellant and deny review to another litigant with a substantially identical case.

STATUTES INVOLVED.

The Illinois Medical Practice Act.

§ 16a. of the Illinois Medical Practice Act (Illinois Revised Statutes, Ch. 91) provides:

> "The Department [of Registration and Education] may revoke * * * the license * * * of any person * * * to practice medicine * * * upon any of the following grounds:
>
> * * * * *
>
> 8. Holding one's self out to treat human ailments by making false statements, or by specifically designating any disease, or group of diseases and making false claims of one-skill, or of the efficacy or value of one's medicine, treatment or remedy therefor, * * *"

§ 16b. of said Medical Practice Act provides:

> "No license or certificate shall be * * * revoked upon any of said grounds unless the holder thereof * * * shall have been summoned to appear before the department by a citation signed by the director, and un-

less the person so summoned shall have been given a hearing before the department. No citation shall be issued except upon a sworn complaint, filed with the department, setting forth the particular act or acts charged against the person to be cited. * * * At the hearing such person shall be accorded ample opportunity to present * * * such statements, testimony, evidence and argument as he may desire * * *."

§ 16b—2 of said Act further provides:

"All final administrative decisions of the Department hereunder shall be subject to judicial review pursuant to the provisions of the 'Administrative Review Act', approved May 8, 1945, and all amendments and modifications thereof [Illinois Revised Statutes, Ch. 110, § 264, *et seq.*] * * *."

The Illinois Administrative Review Act.

§ 268 of the Illinois Administrative Review Act (Illinois Revised Statutes, Ch. 110, § 264 *et seq.*) provides:

"Jurisdiction to review final administrative decisions is vested in the Circuit and Superior Courts. * * * if the venue is not * * * prescribed [in the particular statute under which the decision was made] * * * an action to review * * * may be commenced in the Circuit or Superior Court of any county in which (1) any part of the hearing * * * was held."

§ 274 of said Act provides, in pertinent part:

"* * * The hearing and determination shall extend to all questions of law and of fact presented by the entire record before the court. * * *"

§ 275 thereof, further provides, in pertinent part:

"(2) Technical errors in the proceedings before the administrative agency or its failure to observe the technical rules of evidence shall not constitute grounds for the reversal of the administrative decision *unless*

it appears to the trial court that such error or failure materially affected the rights of any party and resulted in substantial injustice to him." [Emphasis supplied.]

§ 276 thereof further states:

"Any final * * * judgment * * * of the * * * Superior Court entered in an action to review a decision of an administrative agency may be reviewed by the Appellate Court *unless* * * * *Section 75 of the Civil Practice Act* [Illinois Revised Statutes, Ch. 110, § 75] *provides for appeal direct to the Supreme Court,* in which case appeal shall lie to the Supreme Court. * * *" [Emphasis supplied.]

The Illinois Civil Practice Act.

§ 75 of the Illinois Civil Practice Act on appellate practice (Illinois Revised Statutes, Ch. 110, § 75) provides:

"(1) Appeals shall be taken directly to the Supreme Court (a) in all cases in which * * * the validity of a statute or a construction of the constitution is involved, * * *.

"(2) In all cases in which their jurisdiction is invoked pursuant to law, except those wherein appeals are specifically required by the constitution of the State to be allowed from the Appellate Courts to the Supreme Court, the judgments or decrees of the Appellate Courts shall be final, subject however, to the following exceptions: * * * (b) In any such case as is hereinbefore made final in the said Appellate Courts it shall be competent for the Supreme Court to grant leave to appeal for its review and determination with the same power and authority in the case, and with like effect, as if it had been carried by appeal to the said Supreme Court. * * *."

§ 86 of said Act, on transfer of appeals, provides:

"If an appeal is taken to either the Supreme or Appellate Court and it is found or adjudged that the case was wrongly appealed to that court, it shall be the

duty of the court to direct the clerk to transmit the transcript and all files therein with the order of transfer to the clerk of the proper court. On the receipt of the record the clerk shall at once file the same *and the case shall then proceed as if it had been taken there in the first instance.* * * *." [Emphasis supplied.]

STATEMENT.

On January 8, 1952, the Director of the Department of Registration and Education of the State of Illinois adopted the findings and recommendation of a Special Medical Examining Committee (R. 314), made pursuant to a statutory "hearing" (R. 120-254), and revoked petitioner's license to practice medicine in all its branches for violation of the Illinois Medical Practice Act, § 16a.(8). This section authorizes revocation when it is found that a doctor is holding himself out to treat human ailments by making false statements, or by specifically designating any disease and making false claims of his skill, or of the efficacy or value of his medicine, treatment or remedy therefor.

It would appear that petitioner's license was revoked after a "hearing" replete with many violations of due process: (1) a void complaint; (2) evidence obtained solely by entrapment (R. 374) and irrelevant but highly prejudicial evidence; and (3) materially prejudicial judicial notice.

§ 16b of the Illinois Medical Practice Act, in such case made and provided, specifies that "No citation shall be issued except upon a sworn complaint, filed with the department, setting forth the particular act or acts charged against the person to be cited." The complaint (R. 33-36) first filed on January 16, 1950 by one Marjorie Taylor [Hackett] was stricken (R. 48, 53, 74) because her verification recited only "that said complaint is true to the best

of her knowledge and belief" (R. 36). Thereafter, on September 27, 1950, petitioner was cited a second time (R. 36) pursuant to an "amended complaint" dated September 6, 1950. It was agreed (R. 96) that said second complaint was identical to the first except that the new complaint swore "that the contents thereof are true in substance and fact" (R. 40). Depositions of the complainant revealed that she did not know the facts (R. 88-92) but that the only reason she had changed her affidavit was because an attorney for the department told her it was necessary (R. 98). Petitioner's motion to strike this "amended" complaint and citation (R. 77) was denied (R. 113).

Petitioner was convicted *solely* on the basis of *entrapment*. The record discloses no other. The Appellate Court found (R. 371-375) that respondent Marjorie Taylor testified that on December 15, 1949, she went to petitioner's office with one John Hoder, an inspector of the Department of Registration and Education of the State of Illinois; that this was done at the suggestion of one Norma Lee Browning, a reporter for the *Chicago Tribune;* that Hoder introduced himself and her to petitioner as Mr. and Mrs. Hackett of Pana, Illinois; that she talked to petitioner and told him she was a diabetic; that she heard it was possible to obtain from him medicine that was formerly available in Indiana; that when told to wait, she left petitioner's office in a hurry, but called him on the telephone to apologize and make an appointment for the next day; that on December 16, 1949, accompanied by one George Woltman, a reporter for the *Chicago Tribune*, she went to petitioner's office; that Woltman was introduced as her brother-in-law; that petitioner's receptionist took her case history and petitioner examined her; that during the interview she told petitioner that she was tired of taking insulin hypodermically; that petitioner told her that ordinarily he didn't prescribe the medicine to someone who had not

taken it but if she wanted to try it there was no reason why she shouldn't; that she told him she wanted to try it; that petitioner's receptionist brought her the medicine; that petitioner gave her directions for taking it, and that she paid him $30.00 for it. That on cross-examination, she admitted that she did not have diabetes; that Miss Browning of the *Tribune* asked her to go to petitioner's office to get material for a story; that she used the name of Marjorie Hackett at Miss Browning's suggestion; that she did not live in Pana, Illinois; that Mr. Woltman was not her brother-in-law; that she had never taken insulin; that she made a report of her visit to petitioner's office. Petitioner said (R. 378) the reason he gave Mrs. Taylor the medicine was that she had asked for an acid tasting medicine [to increase her appetite]; that he didn't know whether this was exactly what she wanted but she was insistent. He said that she had a neurotic or psychogenesis factor involved in her demeanor or conduct; that he wasn't the type of doctor to hold out something if a patient insists on it so long as it is not poisonous and if she thinks it is going to help her; that since she insisted and was nervous, apprehensive, fidgety and restless he would let her have the medicine. Petitioner duly objected to the receipt of this evidence (R. 122) and to the findings based upon it, and moved to strike same (R. 254).

Moreover, the Department was permitted to introduce into evidence at the "hearing" certified copies of conviction orders (Relator's Exhibits 5 and 6, R. 184) obtained in the District Court of the United States, Northern District of Indiana, Fort Wayne Division, in the cases of *United States* v. *Charles F. and Peter S. Kaadt*, for violation of 21 U. S. C. 331 and 333, by the sale of a claimed cure for diabetes. This evidence was admitted (R. 185) over objection (R. 175, 176, 184), and was not only irrele-

vant but so highly prejudicial to petitioner's case as to preclude the possibility of a fair hearing.

Nevertheless, on statutory appeal (R. 1) from the agency determination, the Superior Court of Cook County, Illinois, affirmed (R. 339). The Court found that (R. 335-8): (1) the amended complaint was sufficient; (2) there was no entrapment; (3) there was evidence of false statements by petitioner; (4) the falsity was either known by petitioner or the statements were made with reckless disregard as to truth or falsity; (5) petitioner has held himself out by such false claims within the meaning of and in violation of the statute; and (6) petitioner does not possess the personal and professional fitness to practice medicine. The Superior Court completely ignored petitioner's argument (R. 332) that the entrapment violated due process, since it found that there was no entrapment; and in finding that the administrative complaint was sufficient (presumably, to apprise petitioner of the nature of the charge against him) the Court overlooked the fact that a complaint sworn to by affiant on his own personal knowledge rather than hearsay is a requirement jurisdictional to the issuance of a citation under the statute.

Petitioner appealed directly to the Supreme Court of Illinois (R. 352) on the theory that there was a controlling constitutional issue, but the Supreme Court declined to take jurisdiction and transferred the appeal to the Appellate Court, First District (R. 357). The Appellate Court affirmed because it believed that (R. 363):

> "Plaintiff's contentions pertaining to due process of law as guaranteed to him by Sec. 2, Art. II of the constitution of the State of Illinois and Amendment XIV to the constitution of the United States, *cannot* be passed upon by us. We must assume that the Supreme Court, in transferring the case to this court decided that these issues were not material to the ultimate decision of appeal." [Emphasis supplied.]

And the Appellate Court said (R. 380):

> "• • • when the [Medical] Committee has made its findings which were adopted by the Director of the Department and affirmed by the trial court, then this court cannot reverse unless it appears to us that the ruling is against the manifest weight of the evidence. As we understand it, we must balance this requirement of 'clear and convincing evidence' against the limitation on our own power to review. We have, therefore, first examined the record to determine whether in the first instance it could be said that the evidence presented by the defendants was *clear and convincing. We find that it was.* While it is true that the plaintiff denies much of the testimony we are of the opinion that this denial *does not weaken* the clear and convincing character of the defendant's case." [Emphasis supplied.]

Petitioner then asked the Illinois Supreme Court to grant leave to appeal to it the Appellate Court decision. In their brief in opposition, the state Department felt it proper to advise the Supreme Court, for the first time, that petitioner had been convicted of attempted abortion in 1941. See *People* v. *Peter B. Schyman,* 374 Ill. 292. Petitioner served his sentence and regained his license. It would be hard to urge that this information, all of which was in the possession of the Department when petitioner's license was restored in 1945, did not prejudice the Supreme Court of Illinois in its search for and evaluation of a controlling constitutional issue. The Supreme Court affirmed without opinion by denying leave to appeal (R. 397).

It would appear that this flagrant disregard of petitioner's rights, privileges and immunities may constitute such a complete deprivation of due process as to control decision in this case.

REASONS FOR GRANTING THE WRIT.

1. The Illinois state courts have decided a federal question of substance, namely what constitutes the due process of law and equal protection of the law required by the 14th Amendment to the Constitution as a condition to revocation of a medical license, not heretofore determined by this Court.

2. If it appear that this Court has determined that question, the Illinois state courts have here decided it in a way probably not in accord with the applicable decisions of this Court.

ARGUMENT.

1. The dearth of decided cases in point makes it seem probable that this Court has never passed squarely upon the proposition that a physician whose license was revoked as the result of an unfair hearing may have been thereby denied due process and, possibly, the equal protection of the laws guaranteed by the Constitution.

In the absence of such determination, it would appear that the decision by a divided court in *Barsky* v. *Board of Regents*, 347 U. S. 442, is susceptible of the misinterpretation that this Court will approve and sustain license revocation in the learned professions by state administrative agencies so long as these proceed in accordance with a statute providing for a hearing. We do not think that this Court meant its decision in the *Barsky* case to be read so broadly or to preclude the assertion, in an applicable case, of violation of constitutionally protected rights, privileges and immunities. It could be urged, however, using the *Barsky* decision as a precedent, that even so little as proof of association with third persons charged with guilt of crime totally unconnected with the licensee's professional qualifications may be sufficient evidence to justify revocation or suspension of a physician's license. *A fortiori*, it will sanction the receipt of such evidence regardless of its irrelevance, prejudicial character or capacity to deny the physician substantial justice.

Indeed, in petitioner's case, his license was revoked after a hearing wherein the sole evidence adduced tending directly or circumstantially to impute to him any knowledge of the falsity of any misrepresentations laid to his charge was his casual mention of the name of a

defendant in a remote case in another state. Respondent state Department was thereupon permitted to put in evidence certified copies of those persons' conviction of an unrelated offense, of which the agency then assumed petitioner must be aware. There was no charge or suggestion that petitioner participated in or knew about the crime in question or was associated with the persons convicted, as in the *Barsky* case. We believe this decision may be a dangerous precedent unless this Court, for the first time, clarifies its position and affirms its continued adherence to the requirement of due process in this type of case.

2. This Court should also grant certiorari herein because the Illinois state courts have decided the substantial federal question of what constitutes such due process and equal protection of the laws guaranteed by the Fourteenth Amendment as will warrant the revocation of a medical license in a way probably not in accord with the applicable decisions of this Court. The opinion in the *Barsky* case, at page 453, stressed the fairness of all the procedures provided by the New York statute for hearings leading to license revocation. The Court concluded not only to the effect that

> "The above provisions, on their face, are well within the degree of reasonableness required to constitute due process of law in a field so permeated with public responsibility as that of health.",

but also exhibited its concern with the manner in which such a statute should be administered, as follows:

> "The statutory procedure as above outlined has been meticulously followed in this case and no objection is made on that score. Appellant, nevertheless, complains that, as construed and applied by the Medical Committee on Grievances and its subcommittee, his hearing violated the due process of law required by the Fourteenth Amendment. He contends that

> evidence was introduced which was immaterial and prejudicial and that the committee based its determination upon that evidence. * * *
>
> "The state courts have determined that the hearing did not violate the statute and, accordingly, we are concerned only with the constitutional question. * * *"

The identical contentions obtain in the case at bar as in the *Barsky* case in which this Honorable Court saw fit to grant certiorari, except that petitioner believes his case discloses more flagrant violations of due process than appeared in the *Barsky* case. In addition to his claim (1) that the decision was manifestly against the weight of the evidence and the action of the Director arbitrary and capricious, petitioner charges (2) that the proceedings against him were based on a void complaint which neither apprised him of the charges against him nor satisfied the jurisdictional prerequisites of the statute, (3) that irrelevant, highly prejudicial and inflammatory evidence was received against him, (4) that the entire case against him was one of true entrapment, (5) that he was judged under conditions which precluded the separation of functions of prosecutor and judge, (6) that improper and unfair judicial notice was taken by the Illinois Supreme Court, and (7) that he was effectually denied proper appellate review on the controlling constitutional issues which he asserts.

3. Petitioner's hearing was unfair and denied him due process of law. The Special Medical Examining Committee overruled petitioner's motions to suppress the evidence obtained solely by entrapment, and on review in the Superior Court of Cook County, that Court found (R. 335):

> "2. That there was no entrapment of the plaintiff with respect to the offense with which he is charged and of which he has been found guilty."

We cannot appreciate how that Court could so find. The facts were clear and undisputed. In the language of many judicial decisions, if this was not a clear cut case of reprehensible entrapment, we do not know what is! The finding could only have meant that the admitted circumstances did not, in the opinion of the Court, in legal effect, constitute material entrapment, or, more probably, that the Court was out of harmony with the doctrine.

Entrapment is serious business and should not be lightly dismissed. We are not aware of this Court ever having repudiated its censure of the process, and certainly it is unfair.

It is fundamental that it is against public policy to sustain a conviction for an offense where officers of the law have incited and induced its commission. *Luterman* v. *United States,* 3 Cir., 1922, 281 Fed. 374, 377; *Andrews* v. *United States,* 162 U. S. 420, 423. Certainly the entraper is *in pari delicto* and a partner in crime, and where it is the government or an agency thereof which resorts to entrapment, certainly the process is not to be condoned, except, perhaps, under the most extreme urgency.

In *Sorrells* v. *United States,* 287 U. S. 435, federal agents induced the defendant, a law-abiding citizen, by repeated insistence, as here, to sell them whiskey in violation of the Law. This Court, speaking through Mr. Chief Justice Hughes, said at page 441:

> "It is well settled that the fact that officers or employees of the government merely afford opportunities or facilities for the commission of the offense does not defeat the prosecution. Artifice and stratagem may be employed to catch those engaged in criminal enterprises. [Citing cases.] * * * *A different question is presented when the criminal design originates with the officials of the Government, and they implant in*

> *the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute.*" [Emphasis supplied.]

This Court reversed because the trial court erred in holding as a matter of law that there had been no entrapment. In the *Luterman* case, *supra*, 281 Fed. 374, 377, the Court said:

> "A distinction is readily to be drawn between inducing a person to commit a crime and luring him to disclose a crime which he has already committed."

In applying this distinction to the facts of that case, the Court said (ibid.):

> "While unquestionably he [the government agent] led the defendants into an attempt to dispose of the stamps unlawfully in their possession, he did not lure them into the commission of crimes which, from their very nature, preceded that act."

In our case, there was nothing unlawful about petitioner's possession of the medicine. There is nothing in the record to show any like offense by petitioner preceding his entrapment. There is not a scintilla of evidence as to any prior course of conduct such as would justify the suspicions of the state Department. And an isolated transaction, wholly conceived by a government agent, will not provide reason to suppose there was previous violation. *U. S.* v. *Eman Mfg. Co.*, D. C. Colo., 271 Fed. 153. And it should be noted that in the *Sorrells* case, *supra*, there was evidence that defendant had the general reputation of a rum runner. Nevertheless, this Court reversed.

In our case, the Appellate Court said (R. 381):

> "[Petitioner] argues that Marjorie Taylor admitted that she did not have diabetes; that she came to his office at the behest of a newspaper reporter who desired to get a story. While these statements are correct, an investigation to apprehend those who violate

> the standards of the medical profession would be impossible if the investigator told the doctor she had no illness or cause for complaint."

The question "What else could the Government do to secure conviction of offenders?" is more than rhetorical. It could wait until there are bona fide complaints by legitimate complainants. In the *Sorrells* case, *supra*, at page 451, the Court says:

> "Objections to the defense of entrapment are also urged upon practical grounds. But considerations of mere convenience must yield to the essential demands of justice. * * * The predisposition and criminal design of the defendant are relevant. But the issues raised and the evidence adduced must be pertinent to the controlling question whether the defendant is a person otherwise innocent whom the Government is seeking to punish for an alleged offense which is the product of the creative activity of its own officials."

There are worse catastrophes than the failure to secure convictions regardless of the sacrifice of human rights.

And in the case at bar, it cannot be conscientiously and realistically suggested that it was not the state agency, in league with the newspaper, which laid the trap. It was an active participant. Respondent Marjorie Taylor testified (R. 122) that she met Mr. Hoder, the state investigator, and accompanied him to the doctor's office, where he did part of the talking. She stated that Miss Browning, the *Tribune* reporter, was with her and apparently knew Mr. Hoder (R. 139). She said that the three of them talked on the way to the doctor's office and decided upon what stories they would tell there. Hoder posed as respondent's husband.

There is precedent for considering proceedings to revoke a medical license as criminal, or quasi-criminal in character. *Hughes* v. *State Board of Medical Examiners*,

158 Ga. 602, 123 S. E. 879; *State Board of Medical Examiners* v. *Lewis*, 149 Ga. 716, 102 S. E. 24. Certainly, the quantum of evidence required to sustain a revocation in Illinois, namely "clear and convincing evidence", *Schireson* v. *Walsh*, 354 Ill. 40, 45 (R. 380), exceeds the standard of substantial evidence commonly applicable to administrative determinations of a civil nature.

We believe the nature of petitioner's entrapment by the Illinois Department personnel transcends the legitimate scope of administrative investigation. It is clear that the nefarious scheme originated entirely in the minds of its perpetrators and not in that of the doctor. They set out deliberately to suggest to him a course of conduct which would never otherwise have occurred to him, and to wheedle him into carrying out the acts in question. It cannot seriously be urged that this procedure was fair, under any concept of fairness. The unfairness was the government's, and its effect not only carried over into the administrative hearing wherein there was only nominal separation of agency functions. Cf. *Wong Yang Sung* v. *McGrath*, 339 U. S. 33. It was decisive. It was unfair to obtain the evidence by entrapment, and it was unfair to use it at the trial, over petitioner's objection. Singly or in conjunction with petitioner's other charges of unfairness, this entrapment surely constitutes an unconscionable deprivation of due process.

4. The citation to Dr. Schyman in this case issued pursuant to a void complaint filed with the Department by respondent Marjorie Taylor. All she knew of the facts was what she had learned on her trip to the doctor's office. She definitely did not know the nature of the medicine the doctor gave her (R. 276, 281-2). Neither did she know its efficacy or lack of it in the treatment of loss of appetite, diabetes, or any other disease or condition (R. 282).

Above all, she had no way of knowing whether or not petitioner knew whether any statement she says he made to her was true or false, and she admitted it (R. 275-6). Nevertheless, she signed a complaint to the Department and swore that said complaint "is true to the best of her knowledge and belief."

Since § 16b of the Illinois Medical Practice Act provided that "No citation shall be issued except upon a sworn complaint, filed with the department", her said original complaint and the citation based upon it were stricken on petitioner's motion (R. 74, 48, 53). Thereafter, she filed a so-called "amended complaint", pursuant to which a new citation issued. This latter complaint Mrs. Taylor verified as "true in substance and fact" (R. 40). However, her deposition was immediately taken by petitioner's counsel, which clearly revealed that she did not then know the facts in question from first hand knowledge (R. 88-92) any more than she had previously, but that the only reason she had changed her affidavit was because an attorney for the Department had told her it was necessary (R. 98). Petitioner's motion to strike this amended complaint and citation was denied (R. 113).

The Appellate Court of Illinois, in passing upon the sufficiency of this amended complaint, said (R. 367):

> "'It is sufficient that the practitioner be fairly and reasonably apprised of the acts of misconduct with which he is charged so that he may properly prepare to defend such charges.'"

and (R. 369):

> "We conclude that the amended complaint was sufficient to apprise plaintiff of the charges made against him."

We believe the Appellate Court misconceived the appropriate principle applicable to petitioner's contentions in

this case, and in so doing abused its discretion. *Bratt* v. *Western Air Lines*, 155 F. 2d 850, 853. The issue here is not only whether the administrative complaint was sufficient to apprise the doctor of the charges against him, but whether the complaint was in the form prescribed by the Illinois Medical Practice Act as a jurisdictional prerequisite to the issuance of a citation.

§ 16b. of the Act prohibits issuance of a citation "except upon a *sworn* complaint". We believe this means a complaint verified by a party having personal knowledge of the facts and no one else. The Department placed its own interpretation on the section when it struck the first complaint. It recited that it was *sworn* to, but on the basis of hearsay information, which was insufficient. Has the defect been cured by no more than a change of language by the affiant? She admitted that she did not know the truth from first hand knowledge (R. 88-92). We cannot place such emphasis upon the importance of the phraseology alone.

Many statutes require the use of verified complaints before a citation may issue. 70 Corpus Juris Secundum §18, p. 893. We believe this is intended as a jurisdictional prerequisite, in order to insure that no complaints would issue on mere suspicion or at the behest of irresponsible persons or publicity seekers who had no legitimate cause for complaint. The language of the statute is prohibitory: "No citation shall issue * * * except (etc.)." In the Illinois case of *Kalman* v. *Walsh*, 355 Ill. 341, the complaint was held insufficient, and in *Schireson* v. *Walsh*, 354 Ill. 40, it was held that there must be at least substantial compliance with the statutory provisions requiring verification. 70 Corpus Juris Secundum 893. Statutory proceedings must be observed in full. *Ashbacker Radio Corp.* v. *Federal Communications Commission*, 326 U. S. 327;

Barsky v. *Board of Regents*, 347 U. S. 442, Gellhorn, "Administrative Law", p. 273, n13.

If there is a void complaint here, the entire proceeding is void. Can there be any doubt that when one is prosecuted under a complaint which should never have issued he is being subjected to unfair treatment?

5. Petitioner's license was revoked pursuant to a hearing in which irrelevant and highly prejudicial evidence was received against him.

The Special Medical Examining Committee found (R. 371) that

> "9. * * * a statement * * * was false and was either *known* by the respondent, Dr. Peter B. Schyman, to be false or was made by him with reckless and wilful disregard as to truth or falsity." [Emphasis supplied.]

The Appellate Court found (Opinion, R. 383) that the Committee admitted evidence, over petitioner's objection, in the form of certified copies of conviction records in another state of one Charles F. Kaadt and one Peter S. Kaadt who were associated with the Kaadt Institute of South Whitely, Indiana. The Court said that the record contained evidence from which an inference might be drawn that the medicine sold by plaintiff to Marjorie Taylor had "some similarity" to that prescribed by the Kaadt Institute. The Court conceded (R. 383):

> "We are of the opinion that in a court of law such conviction records would not have been sufficiently relevant for admission into evidence."

The Appellate Court takes refuge in the position (R. 383):

> "However, an examination of the findings of the Committee in the instant case *does not reveal that the Committee relied upon or even mentioned the Kaadts' convictions.*" (Emphasis supplied.)

It should be a sufficient answer to say that our inspection of these findings does not reveal that the Committee did *not* rely upon them. It is to be assumed that the Committee would rely upon all evidence before it, and we cannot speculate upon that point. When the revocation of a medical license is involved, we should not do so.

The Appellate Court, in its opinion (R. 384), cites cases as presumed support for the proposition that "The admission of irrelevant evidence in administrative proceedings does not of itself require the reversal of the order of the administrative agency where there was independent probative evidence to support the order." We have no quarrel with this proposition, but it is not apposite. It assumes the existence of such other probate evidence of *scienter*. We submit that the record is completely barren of any evidence from which a reasonable inference can be drawn as to petitioner's guilty knowledge.

We believe the prejudice which would result from the admission of such evidence and its consideration by a Committee of doctors is self evident according to any realistic appraisal. *Deery* v. *Cray*, 72 U. S. 795, 807-8; *Peck* v. *Heurich*, 167 U. S. 624, 629. Neither should petitioner be precluded from showing that prejudice because the Committee didn't mention the Kaadts and made only a conclusory finding with respect to petitioner's knowledge.

6. There was unfair judicial notice. When petitioner asked the Supreme Court for leave to appeal, the Attorney General of Illinois, in behalf of the Department of Registration and Education, filed the State's answer to that Petition. It recited, in pertinent part:

> "Recently this Court has held that even in criminal cases, it will take judicial notice of former criminal cases in this Court involving the same plaintiff in error. *People* v. *Thompson*, 392 Ill. 589; *People* v.

Greene, 1 Ill. 2d 235; *People* v. *Bernovich*, 402 Ill. 480; *People* v. *Byrnes*, 4 Ill. 2d 109.

* * * * *

"It appears from the annals of this Court that 'the short interval between 1941 and 1946' during which petitioner did not practice his profession is explained by this Court's decision in *People* v. *Peter B. Schyman*, 374 Ill. 292, in which proceeding this Court sustained petitioner's conviction on charges of criminal abortion."

It would be hard to contend that this disclosure did not influence the decision of the Supreme Court of Illinois. Were it not calculated to do so, there would have been no purpose in its presentation. We cannot regard such a foul blow, struck for the first time at this stage of the proceedings, as consonant with the proper standards of candor and fairness which the people have a right to expect from their legal representative. It cannot have been intended to have other than the inflammatory effect it undoubtedly did have, and such attitude on the part of the State should not be condoned.

Neither can it be argued that this well calculated disclosure was germane to the issues then before the Illinois Supreme Court. It was only to decide whether or not the decisions below were so pregnant with error as to justify a review. No issue of *res judicata* was involved, as in the cases cited by the Attorney General. What bearing petitioner's past history may have on the issue here escapes us. It was completely irrelevant.

7. The provisions of the Illinois Medical Practice Act which authorize the Director of the Department of Registration and Education, on recommendation of a medical examining committee, to revoke licenses to practice medicine are unconstitutional for want of proper legislative definitions of the offenses which constitute cause for revo-

cation and for want of prescribed standards for applying same.

The Illinois statute prescribes specific grounds for license revocation. Among these is that applicable to the case at bar, namely (§ 16a. 8.):

> "*Holding one's self out* to treat human ailments by making false statements, * * *." [Emphasis supplied.]

The statute does not define what constitutes holding one's self out. It does not pretend to suggest whether or not an isolated transaction will suffice to constitute a holding out. The term would seem, by usual understanding, to connote a course of conduct. Cf. *People* v. *Hubbard*, 313 Ill. 346, 349. More particularly, we should be interested in knowing whether the legislature intended the term to embrace a situation induced solely by entrapment. The Committee and the courts below held that it was so intended. We believe this is a clear cut case of improper subdelegation of legislative authority. In his dissenting opinion in *Barsky* v. *Board of Regents*, 347 U. S. 442, Mr. Justice Black, with whom Mr. Justice Douglas concurred, said, at page 459:

> "This record reveals, in my opinion, that New York has contravened the Constitution in at least one, and possibly two respects. * * * Second, it has permitted Dr. Barsky to be tried by an agency vested with intermingled legislative-executive-judicial powers so broad and so devoid of legislative standards or guides that it is in effect not a tribunal operating within the ordinary safeguards of law but an agency with arbitrary power to decide, conceivably on the basis of suspicion, whim or caprice, whether or not physicians shall lose their licenses."

And, continuing, at page 453, the learned Justice stated:

> "In this case one can only guess why the Regents * * * suspended Dr. Barsky. Of course it may be possible that the Regents thought that *every* doctor who

refuses to testify before a congressional committee should be suspended from practice. But so far as we know the suspension may rest on the Board's unproven suspicions that Dr. Barsky had associated with Communists. This latter ground, if the basis of the Regents' action, would indicate that in New York a doctor's right to practice rests on no more than the will of the Regents."

But, if it be urged that the dissenting Judges in the *Barsky* case were talking about the New York statute, while our analysis should be directed to that of Illinois, we respectfully submit that the Supreme Court of Illinois has already had occasion to pass upon the asserted unconstitutionality of the previous Illinois Act relating to medical practice, and declared that Act unconstitutional insofar as it failed to provide an appropriate standard for agency action. *Schireson* v. *Walsh*, 354 Ill. 40. Neither did the present Act change these pertinent provisions in any relevant particular. The former Act vested the Department with power to make an *ex parte* investigation upon complaint made to it and to determine whether or not showing made constituted a *prima facie* case against the registrant. The present Act provides, similarly (§ 16b.):

> "Upon the filing of such sworn complaint if it sets forth grounds for which a license may be suspended or revoked under section 16 of this Act, the director shall forthwith issue a citation * * *"

It is apparent that this language still leaves up to the Director the determination of when a complaint is sufficiently sworn to and whether or not a complaint charging only conclusorily that one is "holding himself out" fulfils the statutory prerequisite. This is doubly important when the record definitely shows that complainant lacks personal knowledge of the facts asserted.

In the case of *Schireson* v. *Walsh, supra,* at pages 48-49, the Court said, in relevant part:

> "* * * there still remains the question of the attempt to confer upon the department the power to decide as to what constitutes, in the first instance, a *prima facie* case authorizing the revocation or suspension of a license issued to a physician. The legislature did not by its act undertake to define the meaning of the term '*prima facie*' case, as used in the Civil Administrative Code. It is the rule of this State that the legislature may enact legislation creating certain rules of evidence and what facts constitute a *prima facie* case. However, any legislative act which undertakes to decide what constitutes a *prima facie* case must lay down some guide or test stating the facts necessary to constitute a *prima facie* case. Where the legislature has undertaken to determine that certain facts constitute a *prima facie* case, it is one of the judicial functions of the court to decide whether or not the facts which make such *prima facie* case have been proved. No such limitation on the Department is contained in the Civil Administrative Code. The Department is unrestricted in that respect. It has the arbitrary power to determine what facts constitute a *prima facie* case authorizing the revocation or suspension of the license of a registrant. No review of the department's decision on that subject is afforded the registrant.
>
> * * * * *
>
> "The attempted *unconstitutional delegation* to it of the power to determine, in the first instance, what constitutes a *prima facie* case against a physician, without any legislative enactment setting forth facts constituting cause for the revocation * * * gives it *no jurisdiction or authority* to determine what complaint * * * constitutes a *prima facie case.* * * *" [Emphasis supplied.]

Legislative abdication is to be abhorred! As Mr. Justice Frankfurter pointed out in his dissent in the *Barsky* case, at page 468:

"When this question came before the New York Court of Appeals, the Court disposed of the issue as follows:

> 'As to the assertions by appellant * * * that the Regents, in deciding on punishment, ignored weighty considerations and acted on matters not proper for consideration, *it is enough to say that we are wholly without jurisdiction to review such questions* * * *.'

* * * deprivation of interests that are a part of a man's liberty and property, when based on such arbitrary grounds, *contravenes the Due Process Clause of the Fourteenth Amendment.*" [Emphasis supplied.]

8. The Supreme Court of Illinois took jurisdiction of the direct appeal to it of the case of *Smith* v. *Department of Registration and Education*, 412 Ill. 332, reversed the decision of the court below revoking Dr. Smith's license and remanded the case. It refused to do so in our case, despite the striking similarity of the situations. The cases were sufficiently alike that our case was referred to in the opinion of the *Smith* case (page 340).

Both Dr. Smith and Dr. Schyman charged that in their hearings they had been deprived of due process of law and denied the equal protection of the laws. The Illinois Supreme Court was impressed in the *Smith* case, where it said (page 339):

> "A case which represents one of the landmarks in this area of constitutional guaranty is *Yick Wo* v. *Hopkins*, 118 U. S. 356. The court, at page 373, said: 'Though the law itself be fair on its face and impartial in appearance, *yet, if it is applied with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Consitution.*'" [Emphasis supplied.]

Dr. Smith, in his case, was complaining principally that he had been denied a change of venue to a different Medical Examining Committee, whereas, he pointed out, petitioner, Dr. Schyman, had been granted such a change. Dr. Smith assailed bitterly the prejudice of the Committee chosen to judge him. He asserted that it was composed of members of the American Medical Association, which organization had prejudged his case and taken a position against him. The Supreme Court agreed that that was unfair and reversed, saying (page 343):

> "Under the special circumstances of this case, it is our opinion that the ends of justice and due process would have been better served if Dr. Smith's request for another hearing agency had been allowed."

Under the circumstances, it is doubtful that any unfairness occasioned by the prejudice of the tribunal will be removed by the transfer; but there is little doubt that the chances of an unfair decision will be lessened if a committee is not permitted to hear irrelevant, prejudicial and inflammatory evidence like that they considered against Dr. Schyman in the case at bar. That is real unfairness which constitutes as great a deprivation of due process as a biased judge. We cannot see eye to eye with the Illinois Court in the disproportionate emphasis it places upon one kind of unfairness in preference to another.

When courts, particularly the Supreme Court of a State, discriminate between persons in similar circumstances, material to their rights, that is an unconstitutional denial of equal protection of the law. *Shelley* v. *Kraemer*, 334 U. S. 1, 14-18; *Twinning* v. *New Jersey*, 211 U. S. 78, 90-91.

Further, any state law, such as section 86 of the Illinois statute, when construed by the highest Court of the State to permit favoritism between litigants, is unconstitutional for the same reason.

CONCLUSION.

Your petitioner respectfully submits that the writ of *certiorari* should issue to the end that this Court may review the decision of the Appellate Court of Illinois, First District, and, to the extent that the order of the Supreme Court of Illinois denying petitioner leave to appeal may constitute a final judgment rendered by the highest court of the state in which a decision could be had, to review the decision of the Supreme Court of Illinois, and determine whether those courts or either of them have deprived petitioner of rights guaranteed by the Fourteenth Amendment to the federal Constitution.

EDWARD BRODKEY,
Attorney for Petitioner

APPENDIX A.

OPINION OF APPELLATE COURT OF ILLINOIS

FIRST DISTRICT.

Judge Robson delivered the Opinion of the Court.

This is an appeal from an order of the trial court affirming the final administrative decision of the defendant Department of Registration and Education revoking plaintiff Peter B. Schyman's license to practice medicine. The appeal was originally filed in the Supreme Court and transferred by it to this court.

Plaintiff's contentions pertaining to due process of law as guaranteed to him by Sec. 2, Art. II of the Constitution of the State of Illinois and Amendment XIV to the Constitution of the United States, cannot be passed upon by us. We must assume that the Supreme Court in transferring the case to this court decided that these issues were not material to the ultimate decision of the appeal.

The principal grounds plaintiff alleges for reversal of the order of the trial court which are properly before us are that (1) the complaint filed against plaintiff was void because of the failure to mention specifically the place where the offense charged against plaintiff was committed; (2) the evidence adduced at the hearings did not support the findings of the administrative agency; (3) certain evidence introduced involving persons and criminal charges that were not connected with or related to plaintiff or the issues at bar, constituted such error as to render the proceedings void and of no effect; and (4) the delegation to the Medical Examining Committee to pass upon purely

legal questions constitutes an illegal subdelegation of power.

The complaint was in the nature of an information filed by one Marjorie Taylor who presented herself to the plaintiff for treatment of diabetes. It was amended, and as one of the principal grounds for reversal is the inadequacy of this complaint, we here quote the charges therein:

> "2. That said Peter B. Schyman, on or about the 16th day of December, A. D. 1949, has held himself out as a specialist in the treatment of many human diseases and particularly diabetes, claiming to use a method for treating said disease and using a certain medicine that will aid in the treatment and cure for said disease of diabetes. The said Peter B. Schyman so holds himself out and makes such claims knowing that such claim and representation is false and of no value; that such claim as to the efficacy of said medicine and treatment is entirely contrary to all regular methods of treatment employed by members of his profession and school of training who are specialists in the treatment of diabetes;
>
> "3. That said Peter B. Schyman, on or about the 16th day of December, A. D. 1949, recommended and prescribed to your relator, a certain liquid medicine that the said Peter B. Schyman uses in treating and curing diabetes and led relator to believe that said liquid medicine was compounded of substances of great medical value; that the said Peter B. Schyman well knew such representations were grossly inaccurate and untrue; that the said Peter B. Schyman well knew that the formula for said medicine was developed by one Charles F. Kaadt and one Peter S. Kaadt of South Whitley, Indiana, and doing business as the Kaadt Diabetic Clinic at South Whitley, Indiana; that the said Peter B. Schyman well knew that on May 4, 1948, in the U. S. District Court, Northern District of Indiana at Fort Wayne, Indiana, the said Peter S. Kaadt and Charles F. Kaadt were convicted and sentenced on the charge of shipping interstate drugs falsely claimed to cure diabetes.

"4. Relator further states that the said Peter B. Schyman, after recommending and prescribing said medicine as stated in paragraph three (3) gave relator a one gallon jug of said medicine and received from relator the sum of thirty ($30.00) dollars; that the said Peter B. Schyman gave relator full written instructions for taking said medicine."

The complaint is informal. It does not mention specifically the place where the offense charged against the plaintiff was committed and plaintiff contends that it is the law of this state that not only the time but also the place of the alleged offense must be stated in the complaint or other documents setting forth the charges. Section 60(c) of the statute governs the procedure to be taken by the Department of Registration and Education of the State of Illinois (Ill. Rev. Stat. 1953, ch. 127, secs. 58-63) in revoking a license. The pertinent part pertaining to this issue is as follows:

"Certificates may be revoked or suspended in the manner provided by this Act and not otherwise. The Department may upon its own motion and shall upon the verified complaint in writing of any person, provided such complaint or such complaint together with evidence, documentary or otherwise, presented in connection therewith shall make a *prima facie* case, investigate the actions of any person holding or claiming to hold a certificate. Before suspending or revoking any certificate, the Department shall issue a citation notifying the registrant of the time and place when and where a hearing of the charges shall be had. Such citation shall contain a statement of the charges or shall be accompanied by a copy of the written complaint if such complaint shall have been filed . . ."

An examination of this section does not indicate that the allegation of the place where the offense occurred is a substantive requirement. It is the law that charges filed before an administrative agency need not be drawn with the

same nice refinements and subtleties as pleadings in a court of record. *Joyce* v. *City of Chicago*, 216 Ill. 466; *Davis* v. *Board of Registration*, 251 Mass. 283. The defendant, however, must be reasonably apprised by the complaint of the case against him so that he will be able to intelligently prepare his defense. *Smith* v. *Department of Registration and Education*, 412 Ill. 332. Plaintiff, however, contends that the construction of the Act should be highly technical and we should require set specifications for every case regardless of the particular situation. As authority for this he cites *Kalman* v. *Walsh*, 355 Ill. 341, which involved the revocation of a dentist's license. The court said, p. 346:

> "While it is not necessary that charges of professional misconduct, proof of which would justify the suspension or revocation of the license of the practitioner, should be drawn with the same accuracy and certainty as an indictment or information in a criminal case, . . . yet such charges should be so drawn as to bring the alleged act of misconduct clearly within the purview of the statute *and should specify the time and place when and where such prohibited act was committed.* The right to proper notice and a sufficient and explicit charge is not procedural but substantive. In the absence of such charges being filed the State Board of Dental Examiners would have no jurisdiction either to proceed with the hearing against the accused or to make a decision therein." (Italics ours.)

He places great stress on the language "and should specify the time and place when and where such prohibited act was committed." It is apparent from the reading of this case that the complaint was completely inadequate in every respect. In *Tarr* v. *Hallihan*, 375 Ill. 38, the *Kalman* case is discussed. The court said as to the *Kalman* case: ". . . it is not controlling here. The basis of that decision . . . was that no charges, as a matter of fact, had been filed against

the dentists involved, but that they were merely notified the department was going to conduct a hearing in the nature of an investigation by a grand jury to determine whether or not they had violated any of a number of provisions of the Dental Practice Act." Later in the same case the court said: "It is sufficient that the practitioner be fairly and reasonably apprised of the acts of misconduct with which he is charged so that he may properly prepare to defend such charges." This would seem to be a proper test for determining whether or not the complaint in the instant case is sufficient.

Is the complaint as filed in the instant case definite enough to reasonably apprise plaintiff of the charges against him even though the place of the occurrence of the prohibited act was not specified? In the case of *In re Van Hyning*, 257 Mich. 146, this issue was discussed. The charges against Van Hyning were as follows:

> "Violation of Section 3, p. 6 of Act No. 237, Pub. Acts of 1899 as amended, 'grossly unprofessional and dishonest conduct' as defined in this section, and in particular with having professional connection with and lending your name to an unlicensed individual in the person of Harry M. Hoxsey, who on March 9, 1931, examined and diagnosed an alleged physical condition in one Otto Fischel. Further that said Harry M. Hoxsey is not licensed to practice medicine in the State of Michigan."

In deciding that this was a sufficient complaint to give the board authority to revoke the physician's license, the court said at pp. 148-9:

> "It is claimed that these charges were not sufficiently specified. It is true that they were not stated as clearly and connectedly as they probably would have been if drafted by a lawyer. In proceedings of this kind it is not necessary that they be stated with that exactness required of court pleadings. It is sufficient if they

> inform the defendant with substantial certainty in what manner he has been guilty of unprofessional and dishonest conduct. . . . We think it was stated with sufficient certainty to reasonably inform him of what he was required to answer when he appeared at the hearing."

Plaintiff in the instant case was certainly afforded a more specific and more adequate complaint than was the physician in the above Michigan case. It is inconceivable that plaintiff was placed at any disadvantage by virtue of the omission complained of. The fact that the complaint did not say that this all happened in Chicago did not prevent plaintiff from understanding the charges against him or from preparing a defense. There is no question but that plaintiff was informed as to where his alleged misconduct occurred long before the hearing. Defendant's discovery deposition dated June 27, 1950 (five months before the hearing), stated that this all occurred when she visited his office. The complaint itself stated that both complainant and plaintiff lived in Chicago, and also gave the date of the occurrence in question. We conclude that the amended complaint was sufficient to apprise plaintiff of the charges made against him.

The second contention of plaintiff that we will consider is that the evidence does not support the findings of the Special Medical Examining Committee, which were approved by the director of the Department of Registration and Education and affirmed by the trial court.

The findings of the Commission were as follows:

> "1. That the respondent, Peter B. Schyman, is duly licensed to practice medicine in all its branches in the State of Illinois.
>
> "2. The Committee finds from the evidence that the respondent, Peter B. Schyman, holds himself out as a specialist in various branches of medicine; that in the

Red Book, Chicago Classified Telephone Directory of December, 1950, the said Peter B. Schyman is listed under the following medical classifications:

a. Physician and Surgeon
b. Chiropractor
c. Osteopath
d. Naturopath

"3. The Committee further finds from the evidence that on December 15, 1949, Mrs. Marjorie Taylor, also known as Marjorie Hackett, went to the office of Dr. Peter B. Schyman at 1869 North Damen Avenue, Chicago, Illinois; that at this office on the above mentioned date, she talked to the respondent, Dr. Peter B. Schyman, and told him she was a diabetic and 'heard it is possible to obtain from you the medicine that used to be available in Indiana and I want to get some'; that Dr. Schyman then told Mrs. Taylor to sit down and he would talk to her in a few minutes, that he was busy with another patient at the present time.

"4. That thereafter Mrs. Taylor left the office of Dr. Peter B. Schyman at 1869 North Damen Avenue, Chicago, Illinois, but called him on the telephone on the same evening to apologize for leaving and to make another appointment for the next day, to-wit: December 16, 1949; that in said telephone conversation Dr. Peter B. Schyman asked Mrs. Taylor, among other things, how long she had had diabetes and how much insulin she was taking and other questions pertaining to her statement that she was suffering from diabetes for three and one-half years.

"5. That another appointment was made for Mrs. Taylor to return to the office of Dr. Peter B. Schyman at 1 p.m., on December 16, 1949, in Chicago, Illinois; that at the said time Mrs. Taylor did appear at the office of Dr. Schyman at 1869 North Damen Avenue, Chicago, Illinois. After a short wait the said Mrs. Taylor was taken into a room off the reception room, commonly called a consulting room, by Dr. Peter B. Schyman; that the said Dr. Peter B. Schyman then proceeded to examine Mrs. Taylor; that the said Dr.

Peter B. Schyman took her blood pressure, examined her heart and analyzed a urine specimen that the said Mrs. Taylor had brought with her to the doctor's office.

"6. That during said examination Mrs. Taylor again said to Dr. Schyman that 'she wanted to get this new medicine, because I was tired of taking insulin hypodermically'; that Dr. Schyman then told Mrs. Taylor that this medicine was new stuff and that the people who made insulin objected; that the said Dr. Schyman further told Mrs. Taylor 'Well, of course you understand that you can't cut out insulin right away, that you use this stuff and it reactivates your glands so that you should be able to cut down the use of insulin gradually, probably at the rate of five units a month.' That Dr. Schyman further told Mrs. Taylor it was a new medicine and that he had become interested in it through a patient of his, a Mrs. Kaadt and through her he was able to make this stuff available to diabetics and that he was organizing a research institute for the purpose of finding a new cure for diabetes; that after said conversation and examination the said Dr. Peter B. Schyman said he would get the medicine for Mrs. Taylor and the said Mrs. Taylor returned to the reception room.

"7. The Committee further finds from the evidence that the medicine was then brought to Mrs. Taylor; that a further conversation was then held between Mrs. Taylor and Dr. Schyman as to how to take the medicine; that the said Dr. Shyman asked Mrs. Taylor when she would return for some more and being advised that Mrs. Taylor would be back in Chicago around Easter, Dr. Schyman then said as follows: 'Ordinarily people take three tablespoonfuls a day in a glass of water before each meal'; that he then advised Mrs. Taylor if she took the said medicine in the above dosages, the gallon of medicine would not last until the middle of March; that then the said Dr. Peter B. Schyman gave Mrs. Taylor written instructions, that is known as Relator's Exhibit No. 1, in this proceeding on specific directions to take said medicine; that said directions called for teaspoonfuls

in lieu of tablespoonfuls and a reduction as ordinarily taken as above mentioned; that for his services and medicine Mrs. Taylor paid to Dr. Schyman the sum of thirty (30.00) dollars.

"8. The Committee further finds from the evidence that the medicine given to Mrs. Taylor is not in fact, nor is there any reputable medical learning or opinion indicating that it is, either a cure, or preventive for diabetes and that the administration thereof is without therapeutic value in diabetes cases.

"9. The Committee further finds that the respondent's statement to Mrs. Taylor that this medicine or material reactivates your glands so that you should be able to cut down the use of insulin gradually, probably at the rate of five units a month, is not a statement in accordance with any reputable medical learning; it was false and was either known by the respondent, Dr. Peter B. Schyman, to be false or was made by him with reckless and wilful disregard as to truth or falsity. Wherefore, the Committee finds said statement false, fraudulent and of no value.

"10. The Committee, therefore, finds and declares that the respondent, Dr. Peter B. Schyman, has held himself out to treat human ailments by making false statements, by making false claims of his skill and by making false claims as to the efficacy and value of his medicine and remedy, knowing such statement to be false within the purview of Paragraph 8 of Section 16 of the Illinois Medical Practice Act.

"11. The Committee further finds that the respondent, Dr. Peter B. Schyman, does not possess the personal or professional fitness to practice medicine in all its branches."

The record of the testimony upon which the Committee based its findings reveals that four witnesses testified for defendants. Marjorie Taylor testified that on December 15, 1949, she went to plaintiff's office with John Hoder, an inspector for the Department of Registration and Education of the State of Illinois. This was done at the sugges-

tion of Norma Lee Browning, a reporter for the Chicago Tribune. Hoder introduced himself and her to plaintiff as Mr. and Mrs. Hackett from Pana, Illinois. She talked to plaintiff and told him she was a diabetic; that she had heard it was possible to obtain from him medicine that was formerly available in Indiana. Plaintiff told her to wait, that he was busy and would be with her in a few minutes. She and Hoder left. She called plaintiff that evening on the telephone and apologized for leaving. She made another appointment for the next day. In her telephone conversation with plaintiff she was asked how long she had had diabetes and how much insulin she was taking. She told him she took twenty-five units of regular insulin once a day in the morning; that she had had a blood sugar test about six months ago and that her urinalysis was all right. Plaintiff suggested that she go to a certain laboratory to have her urine tested. The next day, December 16, 1949, accompanied by George Woltman, a reporter for the Chicago Tribune, she went to plaintiff's office. Woltman was introduced to plaintiff by Mrs. Taylor as her brother-in-law. After a short wait she went into a consultation room with Bernice Martin, a part time receptionist, who took her case history. She had a specimen of urine with her. Shortly thereafter plaintiff came into the room and proceeded to examine her. He took her blood pressure and analyzed the urine specimen. He asked her if she had gone to the laboratory to have her urine tested and she said that she had not; that it was not convenient for her to do so. When he returned he told her that she should drink goat's milk, that it was better than cow's milk. He asked her if she took vitamins and she told him that she did not. He told her that she should take them. He asked her if she ate candy and she told him that she did not; that when she craved something sweet she ate dates. He told her that dates were fine and that she could use honey

or dried fruit. She told him she wanted to get his new medicine because she was tired of taking insulin hypodermically. Plaintiff told her that ordinarly he didn't prescribe the medicine to someone who had not taken it but if she wanted to try it there was no reason why she shouldn't. He told her that it was new stuff and that people who made insulin objected because they have a good thing in insulin; that the discovery of insulin probably set back the research for a cure for diabetes one hundred years; that insulin controls the disease but doesn't cure it; that you have to keep taking it always. She told him that that was why she wanted to try the new stuff. Plaintiff told her that she could not cut out insulin right away; that the use of the new medicine reactivates the glands so that she would be able to cut down the use of insulin gradually, probably at the rate of five units a month; that if she was taking twenty-five units now, and took the new medicine, she could get along with twenty units of insulin the first month, fifteen units the next month, and so on. He said he became interested in the medicine through a patient of his, a Mrs. Kaadt who had come to him as a heart patient and was also a diabetic; that through her he was able to make the medicine available to other diabetics, and that he was organizing a research institute for the purpose of finding a cure for diabetes; that this was what he was working on in his research institute.

Plaintiff excused Mrs. Taylor and she went out to the waiting room. Shortly thereafter Mrs. Martin, plaintiff's receptionist, came out carrying a one-gallon jug of the medicine. She put it in a paper shopping bag and handed it to Mr. Woltman. Mrs. Taylor then asked to see the plaintiff to get directions about taking the medicine. She went to a place in his office with a sign over it that said "pharmacy." He told her he was looking for some vita-

mins for her and she said that she would get them at the drug store. He gave her directions for taking the medicine. Plaintiff asked her when she would be back in Chicago and she told him around Easter. He told her that she was to take three tablespoons of the medicine a day; one tablespoon in a glass of water before each meal; that if she took the medicine in those dosages the gallon would not last until the middle of March. He then gave her written directions as to the taking of the medicine. She paid him $30.00 for it. On cross-examination she admitted that she did not have diabetes; that Miss Browning of the Tribune asked her to go to plaintiff's office to get material for a story; that she used the name of Marjorie Hackett at Miss Browning's suggestion; that she did not live in Pana, Illinois; that Mr. Woltman was not her brother-in-law; that she had never taken insulin; that she made a report of her visit to plaintiff's office.

Mr. Albert A. Uebbing, a witness for defendants, testified that he was an analytical chemist, employed by the Miner Laboratories in Chicago, Illinois; that a gallon of medicine marked "diabetes medicine" was delivered to him with a letter from the managing editor of the Tribune. He made a qualitative analysis limited to vinegar, saltpeter and a malt product. This was a partial analysis. A report of the test was sent to the Chicago Tribune, attention Miss Norma Lee Browning.

Dr. Robert W. Keeton, testifying for defendants, said he was a physician and a professor of medicine. He was licensed to practice medicine in all its branches in 1916. He was the head of the Department of Medicine, and professor of medicine at the University of Illinois. He specializes in internal medicine, with special reference to diabetes and metabolic disorders. He belongs to the Chicago Medical Society, the Illinois Medical Society, the In-

stitute of Medicine and the Chicago Society of Internal Medicine. (The parties stipulated that he was well qualified to testify as a witness.) He examined the report of the analysis made by Mr. Albert A. Uebbing and stated that the medicine in question containing vinegar, saltpeter and a malt product would have no therapeutic value in the treatment of diabetes. He said that he knew of no medicine that could be taken by mouth that had any therapeutic value in the treatment of diabetes; that about twenty-five years ago a compound was used but that it was found that it damaged the liver and had no true therapeutic effect; that the various elements contained in the medicine had no therapeutic value in the treatment of diabetes. In the course of his practice he had never prescribed or used a compound containing any of the elements mentioned in the report in the treatment of diabetes. He said that honey was not harmless for a diabetic, and that doctors do not normally prescribe dates and things of that kind for diabetes.

George G. Woltman, a reporter for the Chicago Tribune, testified for defendant. His testimony corroborated Marjorie Taylor's statements as to her going to the office and meeting with plaintiff's employee, Mrs. Martin. He did not hear any of the conversation between Mrs. Taylor and Mrs. Martin when she went into the consultation room, nor between Mrs. Taylor and plaintiff when she was in his office. He corroborated the testimony between Mrs. Taylor and plaintiff when she came out of plaintiff's office and received directions from plaintiff as to the taking of the medicine contained in the one-gallon jug.

The testimony introduced by plaintiff was his own and that of his employee, Bernice Martin. Plaintiff testified that he was a general practitioner and did not specialize in any particular branch of medicine; that he did not hold

himself out as a specialist in the treatment of diabetes; that Mrs. Taylor visited his office as a patient on the 15th and 16th of December; that he did not tell her he had a certain medicine that would aid her in eliminating the use of insulin in the treatment of diabetes, and that he was of the opinion she was not suffering from diabetes. After questioning and examining Mrs. Taylor he came to the conclusion she had nervous indigestion; that she might have thought she had diabetes but that as a result of his diagnosis he excluded it entirely; that he did not prescribe anything for her that was intended as a remedy for diabetes; that the medicine he prescribed was to improve her appetite and not to help her with diabetes, but that she insisted on having some of the medicine and as a matter of fact she stated she wanted a whole gallon of it. The other part of his testimony on direct examination was a contradiction of all the statements made by Mrs. Taylor.

On cross-examination he said that he was listed in the Red Book, the Chicago classified telephone directory, as a physician, as a chiropractor, as an osteopath and as a naturopath. He said he had special courses in chiropractic and a degree in it. He gave adjustments in connection with physical therapy. The purpose of the listing under the heading of chiropractors was to inform the public if they wanted chiropractic treatment they could get it from him. A chiropractor holds himself out as a chiropractor for manipulation and you could call him a specialist in that particular field. He gave physical therapy and that in a sense is a specialization in the field of medicine. He studied osteopathy and practiced it and is licensed as an osteopath. He authorized the placing of his name in the Chicago classified telephone directory under the various classifications by the R. H. Donnelley Corporation. He stated that he also did rupture work and fitted trusses to

patients. He is not listed in the telephone book in connection with this. Another party runs the truss business. The other party calls him in to make examinations for rupture.

Plaintiff said the reason he gave Mrs. Taylor the gallon of medicine was that she had asked for an acid-tasting medicine. He didn't know whether this was exactly what she wanted but she was insistent. He said she had a neurotic or psychogenesis factor involved in her demeanor or conduct; that he wasn't the type of a doctor to hold out something if a patient insists on it so long as it is not poisonous and if she thinks it is going to help her she can take it; that he was not a psychiatrist but since she insisted and was nervous, apprehensive, fidgety and restless he would let her have the medicine. When a patient goes to a doctor it is his duty to tell the patient what he has unless there is some other factor. Mrs. Taylor was a neurotic and a psychotic in his opinion. He said he knew of no cure for diabetes and no treatment other than the standard exercise and insulin and that the discovery of insulin set it back one hundred years. He said he was not a psychiatrist and that when he had mental patients he referred them to a psychiatrist. He was treating her mentally. He admitted he told her that if her condition continued she could reduce the insulin.

The testimony of Bernice Martin, plaintiff's employee, corroborated the interview with Mrs. Taylor on December 16. She said that Mrs. Taylor told her that she was tired, nervous and had no pep nor ambition; that she mentioned something about an acid-tasting medicine that she wanted in order to gain weight and appetite. Mrs. Taylor said she had diabetes and that she took insulin on and off moderately. No testimony was introduced by plaintiff to deny that of the analytical chemist and Dr. Robert W. Keeton.

Eleven findings were made by the Medical Committee. The first ten findings are on questions of fact. Finding No. 11 is to the effect that the Committee finds that "the respondent, Dr. Peter B. Schyman, does not possess the personal or professional fitness to practice medicine in all its branches."

The license to practice medicine is a very valuable right to plaintiff. If he is deprived of it he might well lose his means of livelihood. For this reason the burden is not only on the defendants to prove their case but they are required to do it by so-called "clear and convincing evidence." *Schireson* v. *Walsh*, 354 Ill. 40, 45. However, when the Committee has made its findings which were adopted by the Director of the Department and affirmed by the trial court, then this court cannot reverse unless it appears to us that the ruling is against the manifest weight of the evidence. As we understand it, we must balance this requirement of "clear and convincing evidence" against the limitation on our own power to review. We have, therefore, first examined the record to determine whether in the first instance it could be said that the evidence presented by the defendants was clear and convincing. We find that it was. While it is true that the plaintiff denies much of the testimony we are of the opinion that this denial does not weaken the clear and convincing character of the defendants' case.

Society places itself in the hands of plaintiff's profession for protection of the life and health of the community. The practice of medicine, in addition to skill and knowledge, requires honesty and integrity of the highest degree. A patient that goes to a doctor is entitled to believe that as a result of his skill, knowledge and integrity he will honestly diagnose his complaints of illness. When medication is prescribed to a patient as a result of a diag-

nosis, he is entitled to trust that it will have the necessary therapeutic and curative value to help alleviate or cure the illness of which he complains. The state under its police powers has the duty of protecting society from those of the profession who are not qualified to be the recipients of this trust. In this connection the state has the power to enact comprehensive, detailed and rigid regulations for the practice of medicine. *People* v. *United Medical Service*, 362 Ill. 442.

Inherent in this power of the state is the right to revoke the license of those who violate the standards it sets. Paragraph 8 of Section 16 of the Illinois Medical Practice Act (Ill. Rev. Stat. 1953, ch. 91, sec. 16a, par. 8) specifically provides for revocation and suspension of license or certificate of any person for "holding one's self out to treat human ailments by making false statements, or by specifically designating any disease, or group of diseases and making false claims of one's skill, or of the efficacy or value of one's medicine, treatment or remedy therefor."

An examination of the testimony of Marjorie Taylor and the other witnesses for the defendant shows that plaintiff prescribed medicine that he knew to be of no therapeutic value. He argues that Marjorie Taylor admitted that she did not have diabetes; that she came to his office at the behest of a newspaper reporter who desired to get a story. While these statements are correct, an investigation to apprehend those who violate the standards of the medical profession would be impossible if the investigator told the doctor she had no illness or cause for complaint. In the instant case when Marjorie Taylor came to plaintiff's office for treatment it was his duty to properly diagnose her case. The diagnosis he claims to have made, but did not tell her of, was that she was a neurotic and a psychotic. If this was true he should have told her and sent her to

a psychiatrist. He should have honestly informed her that she had no diabetes. If this had been done there would have been no cause for complaint. If he was to have taken her statements as true that she had diabetes and had prescribed medication that had the necessary therapeutic or curative values, again there would have been no cause for complaint. Instead, he pretended to diagnose her condition and prescribed a medicine which had no curative or therapeutic value and made a charge of $30.00.

In examining the testimony of Marjorie Taylor we find little, if any, discrepancy between her testimony on direct examination and on cross-examination. The same applies to the other three witnesses for defendant. On the other hand, there are marked discrepancies between plaintiff's testimony on direct examination and on cross-examination. In many instances his answers were evasive and not responsive to the question. An examination of his testimony leads to but one conclusion: that he held himself out as a specialist in the field of medicine, chiropractic, osteopathy, naturopathy, and in the treatment of ruptures. The Committee did not believe his statements that he did not hold himself out to Marjorie Taylor as a specialist in diabetes, and there is no basis for disturbing this finding. After reading his testimony we can readily see why the Committee placed little credence in his statements.

Plaintiff's third contention is that the admission in evidence of certain records of conviction in another state involving persons and criminal charges in no way connected with plaintiff constituted fatal error. The Medical Examining Committee permitted the introduction of certified copies of the opinions of an Indiana court and certified copies of judgment and conviction orders of Charles F. Kaadt and Peter S. Kaadt who were associated with the Kaadt Institute at South Whitley, Indiana. The record contains evidence from which an inference may be drawn

that the medicine sold by plaintiff to Marjorie Taylor had some similarity to that prescribed by the Kaadt Institute at South Whitley, Indiana. We are of the opinion that in a court of law such conviction records would not have been sufficiently relevant for admission into evidence. However, an examination of the findings of the Committee in the instant case does not reveal that the Committee relied upon or even mentioned the Kaadts' convictions.

Under the circumstances, were these records of conviction of such a nature that they prejudiced the Committee so that plaintiff did not have a fair and impartial hearing? Plaintiff cites *Commissioners of Drainage District* v. *Smith*, 233 Ill. 417; *City of Naperville* v. *Wehrle*, 340 Ill. 579, and *Smith* v. *Dept. of Reg. & Education*, 412 Ill. 332, as supporting this contention. In each of these cases the court reversed the agency's order because of a biased hearing where the prejudice was direct, personal and present from the inception of the hearing. It was capable of demonstration from the very beginning by the acts of the agency. In the instant case, the prejudice, if any, was created by the admission of the certified copies of the conviction of the Kaadts, which at best was irrelevant evidence. The admission of irrelevant evidence in administrative proceedings does not of itself require the reversal of the order of the administrative agency where there was independent probative evidence to support the order. In *Sisto* v. *Civil Aeronautics Board*, 179 F. 2d 47, the revocation of a pilot's license by the Civil Aeronautics Board was involved. Defendant objected to the admission of his two prior violations of regulations which were of a somewhat different nature. The court held at pp. 51-52 that:

> "The admission of irrelevant or incompetent matter before an administrative agency does not constitute reversible error, if there is substantial evidence in the

> record to sustain the agency's determination. This being the case prejudice cannot be alleged to the admission of improper evidence *unless it be shown that the board relied on it* . . . the Board itself in its findings, conclusions and orders took no notice thereof and in no way relied on them or even mentioned them. It found substantial grounds *aliunde* for supporting its order. Assuming therefore, *arguendo,* that these amendments were improper and irrelevant, the petitioner still cannot predicate error on their admission. *And even less can he claim prejudice when he cannot demonstrate it.*" (Italics ours.)

To reverse the findings of the Committee under such circumstances where it cannot be shown that the administrative board was prejudiced would amount to requiring such an agency to follow formal legal rules of evidence which it is not equipped to do.

As to the fourth point, that the delegation to the Medical Examining Committee to pass upon purely legal questions constitutes an illegal subdelegation of power, counsel for plaintiff argues that the members of the Committee passed upon purely technical legal questions with reference to the admission of evidence which they were not competent to do, and that upon questions of admission they relied upon counsel for the agency and as a result he acted as both prosecutor and judge.

The Medical Practice Act provides that the hearing be conducted by a committee of five qualified doctors. In the instant case the Special Medical Examining Committee was specially appointed after plaintiff had filed a petition for change of venue from the original medical examining committee. No question was raised as to their competence or ability. From our examination of the record, the hearings were conducted fairly, impartially and in an orderly manner. Our examination also reveals no prejudice or preconceived notions on the part of any of the members

of the committee. They made their findings based on evidence that was properly before them.

The report of the Committee was filed with the director. Plaintiff filed his objections thereto. The director approved the report of the Committee. It is clear that the Medical Examining Committee exercised no final decision-making powers. It was merely a fact-finding body that made recommendations in a report to the director. *Bodenweiser* v. *Dep't. of Registration*, 347 Ill. 115, 121; *Schireson* v. *Walsh*, 354 Ill. 40, 45; *Smith* v. *Dept. of Reg. & Education*, 412 Ill. 332, 333; *Chicago College of Osteopathy* v. *Puffer*, 3 Ill. App. 2d 69. The director, though not possessing power to act without the Committee's recommendations, in his sole discretion decides whether the Committee's findings and recommendations shall be adopted by him and become final or the matter returned to the Committee for rehearing. (Ill. Rev. Stat. 1953, ch. 91, sec. 16b-1, 16d; ch. 127, sec. 60, 60a.) An appeal may be had to the circuit or superior courts only if he adopts the findings and recommendations of the Committee. The Act empowered the director to exercise these quasi-judicial powers that were incidental to its administration. The hearing was not a judicial proceeding. The fact that in the performance of the duties imposed on the director under the Medical Practice Act it was necessary for him to exercise judgment and discretion does not constitute the exercise of judicial power. *Toplis & Harding, Inc.* v. *Murphy*, 384 Ill. 463; *Department of Finance* v. *Gandolfi*, 375 Ill. 237. Likewise under the Act, the Medical Examining Committee, acting as a fact-finding body that made the report to the director, was not exercising judicial power and its acts were not an illegal and unconscionable subdelegation of that power. Under the circumstances we do not see any merit to this contention of plaintiff.

As to acts of the attorney for the agency, the record does not reveal that he acted both as prosecutor and judge. We find nothing in the record to indicate that the Committee relied on his advice in making its rulings. He presented his arguments as an advocate in the same manner as counsel for plaintiff. This contention likewise has no merit.

The order of the trial court is affirmed.

ORDER AFFIRMED.

McCORMICK, *P. J.*, and SCHWARTZ, *J.*, concur.

APPENDIX B.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss.
SUPREME COURT. }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the tenth day of January in the year of our Lord, one thousand nine hundred and fifty-five, within and for the State of Illinois.

Present: George W. Bristow, Chief Justice.

Justice Walter V. Schaefer Justice Ralph L. Maxwell
Justice Harry B. Hershey Justice Ray I. Klingbiel
Justice Joseph E. Daily

Latham Castle, Attorney General

Harry G. Newman, Marshal

Attest: Earle Benjamin Searcy, Clerk

BE IT REMEMBERED, that, to-wit: on the 13th day of January, A. D. 1955, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Peter B. Schyman, *Appellant,* vs. The Department of Registration and Education of the State of Illinois, Administrative Agency, and C. Hobart Engle, Chas. F. Kervin, H. Kenneth Scatliff, Oscar Hawkinson, James H. Hutton, Everett P. Coleman, Walter Stevenson, Jacob L. Sheer and Marjorie Taylor, *Appellees.*	Appeal from Superior Court, Cook County. 52 S 2025.

No. 33279

And now, on this day, the Court having diligently examined and inspected the record and proceedings aforesaid as well as the briefs and argument filed herein, and now being fully advised in the premises is of the opinion, find and adjudge that this case was wrongfully appealed to this Court.

THEREFORE, it is ordered by the Court that this case be and the same is hereby transferred to the Appellate Court for the First District of the State of Illinois, and the Clerk of this Court is directed to transmit the transcript and files herein with the order of this transfer to the Clerk of said Appellate Court.

And it is further ordered by the Court that the said appellees recover of and from the said appellant costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, EARLE BENJAMIN SEARCY, Clerk of the Supreme Court of the State of Illinois and keeper of the record, files and

Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 24th day of January, A. D. 1955.

EARLE BENJAMIN SEARCY, /s/
Clerk, Supreme Court of the State of Illinois.

(SEAL OF THE SUPREME COURT OF THE STATE OF ILLINOIS)

APPENDIX C.

FINAL JUDGMENT ORDER.

This cause coming on to be heard on the complaint for Administrative Review and the answer made thereto, the Court having examined the record and having heard arguments of counsel finds:

1. That the amended complaint is sufficient to charge the plaintiff with a violation of the Illinois Medical Practice Act and to apprise him of the nature of that charge.

2. That there was no entrapment of the plaintiff with respect to the offense with which he is charged and of which he has been found guilty.

3. That the plaintiff, Peter B. Schyman, is duly licensed to practice medicine in all its branches in the State of Illinois.

4. The Court further finds from the evidence that on December 15, 1949, Mrs. Marjorie Taylor, also known as Marjorie Hackett, went to the office of Dr. Peter B. Schyman at 1869 North Damen Avenue, Chicago, Illinois; that at this office on the above mentioned date, she talked to the respondent, Dr. Peter B. Schyman, and told him she was a diabetic and "heard it is possible to obtain from you the medicine that used to be available in Indiana and I want to get some"; that Dr. Schyman then told Mrs. Taylor to sit down and he would talk to her in a few minutes, that he was busy with another patient at the present time.

5. That thereafter Mrs. Taylor left the office of Dr. Peter B. Schyman at 1869 North Damen Avenue, Chicago Illinois, but called him on the telephone the same evening to apologize for leaving and to make another appointment

for the next day, to-wit: December 16, 1949; that in said telephone conversation Dr. Peter B. Schyman asked Mrs. Taylor, among other things, how long she had had diabetes and how much insulin she was taking and other questions pertaining to her statement that she was suffering from diabetes for 3½ years.

6. That another appointment was made for Mrs. Taylor to return to he office of Dr. Peter B. Schyman at 1 P.M., on December 16, 1949, in Chicago, Illinois; that at the said time Mrs. Taylor did appear at the office of Dr. Schyman at 1869 North Damen Avenue, Chicago, Illinois. After a short wait the said Mrs. Taylor was taken into a room off the reception room, commonly called a consulting room, by Dr. Peter B. Schyman; that the said Dr. Peter B. Schyman then proceeded to examine Mrs. Taylor; that the said Dr. Peter B. Schyman took her blood pressure, examined her heart and analyzed a urine specimen that the said Mrs. Taylor had brought with her to the doctor's office.

7. That during said examination Mrs. Taylor again said to Dr. Schyman she "wanted to get this new medicine, because I was tired of taking insulin hypodermically"; that Dr. Schyman then told Mrs. Taylor that this medicine was new stuff and that the people who made insulin objected; that the said Dr. Schyman further told Mrs. Taylor "Well, of course you understand that you can't cut out insulin right away, that you use this stuff and it reactivates your glands so that you should be able to cut down the use of insulin gradually, probably at the rate of five units a month." That Dr. Schyman further told Mrs. Taylor it was a new medicine and that he had become interested in it through a patient of his, a Mrs. Kaadt and through her he was able to make this stuff available to diabetics and that he was organizing a research institute for the purpose of finding a new cure for diabetes; that after said conver-

sation and examination the said Dr. Peter B. Schyman said he would get the medicine for Mrs. Taylor and the said Mrs. Taylor returned to the reception room.

8. The Court further finds from the evidence that the medicine was then brought to Mrs. Taylor; that a further conversation was then held between Mrs. Taylor and Dr. Schyman as to how to take the medicine; that the said Dr. Schyman asked Mrs. Taylor when she would return for some more and being advised that Mrs. Taylor would be back in Chicago around Easter, Dr. Schyman then said as follows: "Ordinarily people take three tablespoonfuls a day in a glass of water before each meal"; that he then advised Mrs. Taylor if she took the said medicine in the above dosages, the gallon of medicine would not last until the middle of March; that then the said Dr. Peter B. Schyman gave Mrs. Taylor written instructions, that is known as Relator's Exhibit No. 1, in this proceeding on specific directions to take said medicine; that said directions called for teaspoonfuls in lieu of tablespoonfuls and a reduction as ordinarily taken as above mentioned; that for his services and medicine Mrs. Taylor paid to Dr. Schyman the sum of thirty ($30) Dollars.

9. That the alleged medicine given by the plaintiff to Mrs. Taylor in a gallon jug identified as Exhibit 3 contained the following ingredients:

> Titratable acidity containing 3.44 grams per 100 ml's., (acetic acid), also potassium nitrate (salt peter), that no tests were made for pepsin and sodium benzoic.

10. That the alleged medicine, whether or not it contained pepsin and sodium benzoic was of no therapeutic value in diabetes.

11. The Court further finds from the evidence that the medicine given to Mrs. Taylor is not in fact, nor is

there any reputable medical learning or opinion indicating that it is, either a cure, or preventive for diabetes and that the administration thereof is without therapeutic value in diabetes cases.

12. The Court finds from the evidence that the plaintiff substantially corroborates the testimony of the complainant, Margaret Taylor, with the exception that the plaintiff contends as a matter of defense that he was treating the complainant as a neurotic rather than as a diabetic, although plaintiff admits he never informed complainant that she was not suffering from diabetes. However, the testimony of the plaintiff cannot be given credence and is unworthy of belief in the light of plaintiff's own testimony that wherever he found a patient who was suffering from a mental or nervous disorder he would refer said patient to a psychiatrist.

13. The Court further finds that the plaintiff's statement to Mrs. Taylor that this medicine or material reactivates your glands so that you should be able to cut down the use of insulin gradually, probably at the rate of five units a month, is not a statement in accordance with any reputable medical learning; it was false and was either known by the plaintiff, Dr. Peter B. Schyman, to be false or was made by him with reckless and willful disregard as to truth or falsity. Wherefore, the Court finds said statement false, fraudulent and of no value.

14. The Court, therefore, finds and declares that the plaintiff, Dr. Peter B. Schyman, has held himself out to treat human ailments by making false statements and by making false claims as to the efficacy and value of his medicine and remedy, knowing such statements to be false within the purview of Paragraph 8 of Section 16 of the Illinois Medical Practice Act.

15. The Court further finds that the plaintiff, Dr. Peter

B. Schyman, does not possess the personal or professional fitness to practice medicine in all its branches.

It Is Therefore Ordered, Adjudged and Decreed that the decision of the Department of Registration and Education be and the same is hereby affirmed, that the plaintiff take nothing by his suit, and that all costs in this proceeding be taxed against the plaintiff.

Enter

(Signed) JAMES J. McDERMOTT,
Judge.

Dated:

January 20, 1954.

APPENDIX D.

REPORT OF THE FINDINGS AND RECOMMENDATIONS OF THE SPECIAL MEDICAL EXAMINING COMMITTEE TO MR. C. HOBART ENGLE, DIRECTOR OF REGISTRATION AND EDUCATION.

The undersigned duly appointed Committee of the Department of Registration and Education of the State of Illinois report that in the above entitled cause notice was given to the respondent, Dr. Peter B. Schyman, in conformity with the Statutes in such case made and provided; the matter was set for hearing and continued from time to time. The matter was called for hearing April 13, 1951, before the Special Medical Examining Committee and then continued to May 4, 1951. The respondent was present and represented by G. Wallace Roth and Dilling & Dilling. Relator was present. Mr. Jacob L. Sheer, Supervisor of Complaints, represented the Department. From the evidence and testimony presented in this cause, the Committee finds as follows:

1. That the respondent, Peter B. Schyman, is duly licensed to practice medicine in all its branches in the State of Illinois.

2. The Committee finds from the evidence that the respondent, Peter B. Schyman, holds himself out as a specialist in various branches of medicine; that in the Red Book Chicago Classified Telephone Directory of December, 1950, the said Peter B. Schyman is listed under the following medical classifications:

   a. Physician and Surgeon
   b. Chiropractor
   c. Osteopath
   d. Naturopath

3. The Committee further finds from the evidence that on December 15, 1949, Mrs. Marjorie Taylor, also known as Marjorie Hackett, went to the office of Dr. Peter B. Schyman at 1869 North Damen Avenue, Chicago, Illinois; that at this office on the above mentioned date, she talked to the respondent, Dr. Peter B. Schyman, and told him she was a diabetic and "heard it is possible to obtain from you the medicine that used to be available in Indiana and I want to get some"; that Dr. Schyman then told Mrs. Taylor to sit down and he would talk to her in a few minutes, that he was busy with another patient at the present time.

4. That thereafter Mrs. Taylor left the office of Dr. Peter B. Schyman at 1869 North Damen, Chicago, Illinois, but called him on the telephone on the same evening to apologize for leaving and to make another appointment for the next day, to-wit: December 16, 1949; that in said telephone conversation Dr. Peter B. Schyman asked Mrs. Taylor, among other things, how long she had had diabetes and how much insulin she was taking and other questions pertaining to her statement that she was suffering from diabetes for 3½ years.

5. That another appointment was made for Mrs. Taylor to return to the office of Dr. Peter B. Schyman at 1 p. m., on December 16, 1949, in Chicago, Illinois; that at the said time Mrs. Taylor did appear at the office of Dr. Schyman at 1869 North Damen Avenue, Chicago, Illinois. After a short wait the said Mrs. Taylor was taken into a room off the reception room, commonly called a consulting room, by Dr. Peter B. Schyman; that the said Dr. Peter B. Schyman then proceeded to examine Mrs. Taylor; that the said Dr. Peter B. Schyman took her blood pressure, examined her heart and analyzed a urine specimen that the said Mrs. Taylor had brought with her to the doctor's office.

6. That during said examination Mrs. Taylor again said to Dr. Schyman that "she wanted to get this new medicine, because I was tired to taking insulin hypodermically"; that Dr. Schyman then told Mrs. Taylor that this medicine was new stuff and that the people who made insulin objected; that the said Dr. Schyman

further told Mrs. Taylor "Well, of course you understand that you can't cut out insulin right away, that you use this stuff and it reactivates your glands so that you should be able to cut down the use of insulin gradually, probably at the rate of five units a month". That Dr. Schyman further told Mrs. Taylor it was a new medicine and that he had become interested in it through a patient of his, a Mrs. Kaadt and through her he was able to make this stuff available to diabetics and that he was organizing a research institute for the purpose of finding a new cure for diabetes; that after said conversation and examination the said Dr. Peter B. Schyman said he would get the medicine for Mrs. Taylor and the said Mrs. Taylor returned to the reception room.

7. The Committee further finds from the evidence that the medicine was then brought to Mrs. Taylor; that a further conversation was then held between Mrs. Taylor and Dr. Schyman as to how to take the medicine; that the said Dr. Schyman asked Mrs. Taylor when she would return for some more and being advised that Mrs. Taylor would be back in Chicago around Easter, Dr. Schyman then said as follows: "Ordinarily people take three tablespoonfuls a day in a glass of water before each meal"; that he then advised Mrs. Taylor if she took the said medicine in the above dosages, the gallon of medicine would not last until the middle of March; that then the said Dr. Peter B. Schyman gave Mrs. Taylor written instructions, that is known as Relator's Exhibit No. 1, in this proceeding on specific directions to take said medicine; that said directions called for teaspoonfuls in lieu of tablespoonfuls and a reduction as ordinarily taken as above mentioned; that for his services and medicine Mrs. Taylor paid to Dr. Schyman the sum of thirty ($30) dollars.

8. The Committee further finds from the evidence that the medicine given to Mrs. Taylor is not in fact, nor is there any reputable medical learning or opinion indicating that it is, either a cure, or preventive for diabetes and that the administration thereof is without therapeutic value in diabetes cases.

9. The Committee further finds that respondent's statement to Mrs. Taylor that this medicine or material reactivates your glands so that you should be able to cut down the use of insulin gradually, probably at the rate of five units a month, is not a statement in accordance with any reputable medical learning; it was false and was either known by the respondent, Dr. Peter B. Schyman, to be false or was made by him with reckless and wilful disregard as to truth or falsity. Wherefore, the Committee finds said statement false, fraudulent and of no value.

10. The Committee, therefore, finds and declares that the respondent, Dr. Peter B. Schyman, has held himself out to treat human ailments by making false statements, by making false claims of his skill and by making false claims as to the efficacy and value of his medicine and remedy, knowing such statements to be false within the purview of Paragraph 8 of Section 16 of the Illinois Medical Practice Act.

11. The Committee further finds that the respondent, Dr. Peter B. Schyman, does not possess the personal or professional fitness to practice medicine in all its branches.

On the basis of the foregoing findings this Special Medical Examining Committee respectfully recommends that the license of Dr. Peter B. Schyman to practice medicine in all its branches be Revoked.

Respectfully submitted,

(Signed) H. Kenneth Scatliff, *M.D.*
(Signed) Everett P. Coleman, *M.D.*
(Signed) Oscar Hawkinson, *M.D.*
(Signed) James H. Hutton, *M.D.*

Approved:

(Signed) Chas. F. Kervin,
Superintendent of Registration.

(Signed) C. Hobart Engle,
Director.

Dated this Twenty-second day of August, 1951.

FILED
MAR 22 19
JOHN T. FEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 639

PETER B. SCHYMAN,

Petitioner,

vs.

THE DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS, AN ADMINISTRATIVE AGENCY, AND C. HOBART ENGLE, CHAS. F. KERVIN, H. KENNETH SCATLIFF, OSCAR HAWKINSON, JAMES H. HUTTON, EVERETT P. COLEMAN, WALTER STEVENSON, JACOB L. SCHEER AND MARJORIE TAYLOR,

Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

EDWARD BRODKEY,
315 Plymouth Court,
Chicago, Illinois,
Attorney for Petitioner.

THE DUNHOOP-WARREN PRINTING COMPANY, CHICAGO

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PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Peter B. Schyman, petitioner, prays that this Court grant rehearing of its order of February 25, 1957, denying the petition for a writ of certiorari, wherein the revocation of petitioner's medical license had been sustained by the Illinois courts, and that a writ of certiorari issue to review the judgment of the Appellate Court of Illinois, First District, and, to the extent that the order of the Supreme

Court of Illinois denying petitioner leave to appeal may constitute a final judgment rendered by the highest court of the State in which a decision could be had, to review the order of that Court.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

1. Presumably petitioner failed clearly to demonstrate that there were special and important reasons for review. This may have been the result of petitioner's neglect to argue certain enumerated questions (Pet'n for Cert., pp. 4 and 5) and his consequent failure to persuade the Court that a substantial federal question was controlling.

In case this honorable Court had the impression that the decision of the State court review of which is herein sought would be in conflict with the applicable decision of this Court, *Barsky* v. *Board of Regents*, 347 U. S. 442, in the event that the State court decision could not be sustained on non-Federal grounds, or that petitioner's claims that he was denied due process and equal protection of the law presented no more than simple evidentiary questions, petitioner respectfully requests rehearing of his petition for certiorari confined to the question of whether or not the decision below can be sustained on other than Constitutional grounds.[1]

The Illinois Supreme Court, without opinion, transferred to the Illinois Appellate Court petitioner's direct appeal on constitutional grounds, because the "case was wrongfully appealed to th[at] Court" (Pet'n for Cert., p. 56). It would have been properly so appealed if a constitutional

1. It is assumed that it is apparent that the constitutional questions were properly preserved for review or their presentation waived by having been passed on by the Illinois Supreme Court and that the decision of the Illinois Appellate Court states specifically that that Court lacked authority to pass on the constitutional issues.

question were controlling. Illinois Revised Statutes, Ch. 110, § 75(1). The Illinois Appellate Court to which the appeal was transferred said, in opinion (Pet'n for Cert., p. 33), that it *could not* pass on the constitutional questions, as it believed the Illinois "Supreme Court decided that the issues were not material." (*Ibid.*) Therefore, it would appear that petitioner's complaint is directed to: (1) the erroneous "refusal" of the Illinois Appellate Court to pass on the asserted constitutional questions; and (2) to the finding of the Illinois Supreme Court implicit in its transfer order to the effect that either there was no constitutional question involved or that it was not "material."

Insofar as the decision of the Illinois Appellate Court is concerned, it purports to be based *solely* on non-Federal grounds (Pet'n for Cert., p. 33). However, a summary perusal of the opinion (*Ibid.*, pp. 33-54) discloses that the Court considered and rejected petitioner's contentions that he had been deprived of due process and equal protection.[2] Therefore, despite paying lip-service to abstention, the Appellate Court did pass on the constitutional issues. It did not find any factual controversy as to the relevant evidence. It differed with petitioner only by embracing *an interpretation of the law* which permits such procedure as not offensive to the Constitution. It is submitted that this Court is not bound by such findings. Where the decision of the State court is based solely upon a non-Federal ground, but the federal question was properly asserted, the Supreme Court will determine whether the non-Federal ground independently and adequately supports the judgment. The failure of the State court to pass upon the federal claim is not conclusive. Only if the non-Federal

2. He alleged that the proceedings were based on a defective and void complaint, that the sole evidence against him was procured by entrapment, that admittedly irrelevant and highly prejudicial evidence was received against him and that *unfair* judicial notice was taken.

ground is adequate will review be declined. *Wood* v. *Chesborough*, 228 U. S. 672, 676-680; *West Chicago St. R. Co.* v. *Illinois, ex rel., Chicago*, 201 U. S. 506, 519-520; *Chicago B. & Q. R. Co.* v. *Illinois, ex rel., Com'rs*, 200 U. S. 561, 580-1.

The Illinois Supreme Court transferred petitioner's direct appeal, *without opinion*.[3] Where both federal and non-Federal questions are properly raised in the record but no opinion is delivered by the highest state court in rendering its judgment, this Court will ordinarily presume that the decision is based upon a non-Federal ground raised in the record *which may be found adequate to support it*. *Lynch* v. *New York, ex rel., Pierson*, 293 U. S. 52, 54-5; *Adams* v. *Russell*, 229 U. S. 353, 358; *Woods* v. *Nierstheimer*, 328 U. S. 211; *Phyle* v. *Duffy*, 334 U. S. 431, and see *Williams* v. *Kaiser*, 323 U. S. 471, 477. But, if this Court is unable to discover an adequate non-Federal ground in support of the state court judgment, "it will be presumed that the state court based its judgment on the law raising the federal question." *Klinger* v. *Missouri*, 13 Wall. 257, 263; see also, *Williams* v. *Kaiser*, *supra*, 478; *Maguire* v. *Taylor*, 8 Wall. 650, 665; *Johnson* v. *Risk*, 137 U. S. 300, 307; *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282-3.

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3. Cf. the opinion of the Illinois Supreme Court in the case of *B. H. Moore, et al.* v. *County Board of School Trustees of Logan County*, 139 N. E. 2d 738, decided Jan. 24, 1957, the published opinion of which has intervened since the denial of certiorari herein, wherein the Court explained why it believed there was no controlling constitutional issue involved and transferred the appeal to the Appellate Court. The Court said (Opin., p. 740): "Unless the constitutional questions presented are debatable, this court does not assume jurisdiction of an appeal on the ground that a constitutional question is involved. [Citing cases.] Inasmuch as the residence and legal voter classifications have long been considered reasonable and proper, particularly in detachment proceedings under school laws, the question may be regarded as settled." Quere: When is a constitutional question debatable?

It is submitted that a microscopic inspection of the record herein fails to disclose an adequate non-Federal ground for the decision. The non-Federal ground that the decision of the Illinois Department of Registration and Education to revoke petitioner's license is not manifestly against the weight of the evidence is not broad enough without reference to the federal question, to sustain the State court judgment. *Murdock* v. *Memphis*, 20 Wall. 590, 636; *Eustice* v. *Bolles*, 150 U. S. 361, 370. Even if the evidence against petitioner were sufficient, the improper manner in which it was procured and the effect of the admission of irrelevant and highly prejudicial evidence pose questions which show that the non-Federal ground cannot be independent of the federal question. "Where the non-Federal ground is so interwoven with the other as not to be an independent matter [Supreme Court] Jurisdiction is plain." *Enterprise Irrig. Dist.* v. *Farmer's Mut. Canal Co.*, 243 U. S. 157, 164.

It is therefore patent that the Illinois Courts below have "willy-nilly" passed upon the asserted constitutional question. They decided, in effect, that what petitioner characterizes as unconstitutional deprivations of due process and denials of equal protection are no more than simple evidentiary determinations within the discretion of the trial court.

Where a constitutional issue has been raised and presented to a State court, which was necessary to the judgment or decree rendered in the case and the decision is against the right asserted under the Constitution this Court must examine the judgment to decide whether this claim of right was *correctly* adjudicated by the State court. *Murdock* v. *City of Memphis*, *supra*, p. 636.

It is submitted that the State court decision on the constitutional question was *incorrect*. The line of demarcation

between such judicial or administrative action as amounts to a proper exercise of discretion and such procedural unfairness as constitutes a deprivation of due process is tenuous at best. It has occasioned much difference in thinking and viewpoint.[4] It may be that a single erroneous act by the Board below, in the conduct of its hearing, would not necessarily amount to serious unfairness, but in conjunction with other improprieties, as in this case, it may have the effect of denying a fair hearing.

We believe this Court need not agree with any state court which asserts, on its own authority, that it has accorded any litigant procedural due process; and we think it should refuse to do so in this case. Can it be said that the fairness of a hearing based on an unreal complaint, wherein the only evidence adduced was procured by entrapment and the judgment of the doctors comprising the Medical Committee may have been influenced by admittedly irrelevant and inflammatory evidence, is not "debatable"? We are not referred to any judicial precedent of the Illinois Courts showing that the question is settled, as in *Moore* v. *County Board*, fn 3.

2. The question continues to be one of large practical importance. There is a growing inclination to excuse allegedly unfair judicial action by efforts to justify it in certain cases. These situations will arise increasingly. There is need for some formulation by which a state court or a lower federal court can determine in advance what procedural defects this Court will regard as tantamount to a deprivation of due process, such as will act as a guide for future conduct.[5] In *Breithaupt* v. *Abram*, 77 S. Ct. 408, decided February 25, 1957, this Court said (p. 410):

4. Cf. *Breithaupt* v. *Abram*, 77 S. Ct. 408, decided Feb. 25, 1957, and dissents.

5. We read the case of *Barsky* v. *Board of Regents*, 347 U. S. 442, as holding that although there may be a deprivation of due process attendant upon revocation of a medical license, there *was*

> "* * * due process is not measured by the yardstick of personal reaction or the sphygmogram of the most sensitive person, but by that whole community sense of 'decency and fairness' that has been woven by common experience into the fabric of acceptable conduct. It is on this bedrock that this Court has established the concept of due process."

In the light of this criterion or standard we ask: Would the community as a whole agree that *this* petitioner had received a fair trial?

CONCLUSION.

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Appellate Court of Illinois, First District, the Supreme Court of Illinois or to both such Courts.

Respectfully submitted,

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EDWARD BRODKEY,
Counsel for Petitioner.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

.....

EDWARD BRODKEY,
Counsel for Petitioner.

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none under the facts of that case. As these exact facts may never be repeated, there may never arise any conflict of decision on the point. Cf. *Schriber-Schroth Co.* v. *Cleveland Trust Co.*, 305 U. S. 47, 50.